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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Nicole Shermaine Martinez,

13 Defendant.
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CR 23-00081-TUC-CKJ (MAA)

REPORT AND RECOMMENDATION

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16 This action was referred to Magistrate Judge Michael Ambri for pretrial matters.
17 On March 7, 2023, Defendant filed a Motion to Suppress Evidence. Doc. 32. The
18 Government filed a Response. Doc. 37. Defendant did not file a Reply. An evidentiary
19 hearing was held on May 10, 2023. Doc. 44. Defendant was present and represented by
20 counsel. United States Border Patrol Agents (“BPAs”) Bradford Saltee and Ryan Olivas
21 testified for the Government. Defendant did not call witnesses. Government’s Exhibits 1-
22 7 and 9-11 were admitted into evidence by stipulation of the parties. Defendant objected
23 to part of Government’s Exhibit 8. The parties stipulated to admission of a redacted Exhibit
24 8 and the redacted exhibit was admitted into evidence. Defendant did not offer exhibits.
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1 Defendant is charged in a two-count indictment with conspiracy to transport illegal
2 aliens for profit and transportation of illegal aliens for profit. Doc. 9 (redacted). The
3 Motion to Suppress (Doc. 32) argues BPA Saltee stopped Defendant's vehicle without
4 reasonable suspicion in violation of the Fourth Amendment. Defendant seeks exclusion of
5 all evidence resulting from the stop. The Government argues reasonable suspicion existed.
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8 Having considered the briefing, testimony, exhibits admitted into evidence, and
9 arguments, the Magistrate Judge recommends that the motion be denied. The Court finds,
10 based on the totality of circumstances, that reasonable suspicion existed for the stop.
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12 **Circumstances Of The Stop.**

13 The stop occurred on Federal Route 1 ("FR-1") in southwestern Arizona. FR-1 is a
14 two-lane paved road on the Tohono O'odham Nation ("TON"). Hearing Transcript ("HT")
15 at 24:4-5, 35:13-23, 63:8-9; Exhibit 11. FR-1 runs approximately 30 miles southward
16 beginning at State Route 86 ("SR-86") through the TON communities of Gu Vo, Pia Oik
17 and Menagers Dam. HT 23:16-23; 32:18 to 33:5. Gu Vo is the northernmost of the three
18 communities on FR-1, nearest SR-86 at approximately milepost 20. *Id.* Pia Oik is the next
19 community heading south on FR-1, at approximately milepost 11. *Id.* Menagers Dam is
20 the southernmost community on FR-1, approximately a half-mile or so north of the United
21 States-Mexico border. *Id.* FR-1 dead-ends at Menagers Dam. Exhibit 1 at p. 2.
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24 At the time of the stop, BPA Saltee had been a Border Patrol agent working out of
25 the Border Patrol's Ajo Station in southwestern Arizona for approximately 17 years. HT
26 21:13-20. He had worked the FR-1 corridor on and off for approximately 13 years. HT
27 22:21 to 23:1. For the four years preceding this stop, he worked almost exclusively in the
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1 FR-1 corridor. *Id.* BPA Sallee testified that, due to his training and years working the FR-
2 1 corridor, he was familiar with the area's communities, many or most of the locally owned
3 vehicles, and drug and human smuggling in the area. HT 22:3-20, 24:4 to 27:6, 36:9-24.
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5 BPA Sallee describes the FR-1 corridor as remote, with small rural populations and
6 little local vehicular traffic. Exhibit 1 at p. 2; HT 64:8-12. Gu Vo, Pia Oik and Menagers
7 Dam are the only communities on FR-1. HT 23:22-25. Aerial images show sparsely
8 developed areas surrounded by expanses of wilderness. Exhibits 3-10. According to BPA
9 Sallee, Menagers Dam is the most populous of the three communities with, as a very rough
10 estimate, perhaps 300 people. HT 26:5-7; 49:17 to 50:7. According to BPA Sallee, the
11 only edifices in Menagers Dam are residential with the exception of a recreation center for
12 TON members. HT 26:12-22, 66:18-20, 67:22 to 68:5. Aerial images show a small
13 residential community. Exhibits 6 and 7; HT 31:16 to 32:13. There are no commercial
14 buildings, no public facilities, no apartment complexes, no housing developments, no
15 tourist destinations, no convenience stores, no gas stations and no restaurants in the area.
16 HT 26:12-22, 32:1-13, 67:22 to 68:5. FR-1 is the only paved road in the corridor; all other
17 roads are residential dirt roads. HT 31:2-8. According to BPA Sallee, people are required
18 to obtain permission from TON to be in the FR-1 corridor, except for TON members and
19 their guests, and signs are posted to that effect. HT 24:6-12, 65:3-11. However, no
20 physical barriers prevent access to and within the area. HT 64:25 to 65:3, 69:3-8. The FR-
21 1 corridor has no Border Patrol checkpoints. Exhibit 1 at p. 2.
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23 BPA Sallee describes Menagers Dam as a "high-traffic" area for drug and human
24 smuggling. HT 24:17-22. BPA Sallee testified that, based on his 17 years with Border
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1 Patrol, drug and human smuggling have occurred there daily. HT 24:23-25. According to
2 BPA Sallee, Menagers Dam has approximately 50-70 buildings, many of which are
3 unoccupied at various times and, when unoccupied, are often used by smugglers as stash
4 houses for drugs and undocumented non-citizens (“UNCs”). HT 25:14 to 26:4; Exhibits 6
5 and 7. BPA Sallee testified that, over the years, he has personally pulled drugs and UNCs
6 from most of the buildings in Menagers Dam. HT 25:2-6. There are several “loadout”
7 areas along FR-1 in and around Menagers Dam where drugs and UNCs are loaded into
8 vehicles to be brought north on FR-1 and further in the United States. HT 25:7-14.
9 According to BPA Sallee, a large wash at milepost 2 near Menagers Dam is a known
10 loadout area where smugglers pick up UNCs and drugs for transportation north on FR-1.
11 HT 25:7-11. Other such loadout areas exist at various points along FR-1 farther north of
12 Menagers Dam, including at or near mileposts 4, 5 and 7. HT 25:12-14. BPA Sallee
13 testified that smuggling in the area typically involves nonlocal vehicles traveling south on
14 FR-1 toward or to Menagers Dam, making a quick turnaround having picked up drugs or
15 UNCs in a loadout area or stash house, and traveling back out north on FR-1 up to SR-86
16 and then further into the United States. HT 36:9 to 37:2, 41:22 to 42:2, 67:18-21.

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18 On Sunday, January 15, 2023, BPA Sallee was on duty in his patrol vehicle parked
19 along FR-1 at or near milepost 20 in or near Gu Vo. HT 23:2-10, 36:1-2, 45:16-23. At
20 approximately 5:30 p.m., just before sundown, a silver Chevrolet Equinox traveling south
21 on FR-1 caught his attention. HT 36:1 to 37:5, 52:8-21. He had never seen the vehicle
22 before and did not recognize the vehicle as belonging to an area resident. HT 68:6-9. He
23 ran the license plate and found the vehicle was registered in Eloy, Arizona, approximately
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1 100 miles away in BPA Sallee's estimation. HT 36:4-7, 37:3-5. In BPA Sallee's
2 experience, local vehicles are typically registered in Sells or Ajo, closer populous areas
3 with Sells a TON hub and Ajo providing access to mailboxes. HT 26:23 to 27:6. In BPA
4 Sallee's experience, area residents do not typically have ties to Eloy. HT 56:13-19; Exhibit
5 1 at p. 2. According to BPA Sallee, Eloy is a trans-shipment center, among others in
6 Arizona, for drug and human smuggling. Exhibit 1 at p. 2; HT 58:16 to 59:12. Also in
7 BPA Sallee's experience, vehicles used in smuggling in the FR-1 corridor have typically
8 been registered to places other than Ajo and Sells, and vehicles registered to Eloy have
9 often been found in smuggling in the area. Exhibit 1 at p. 2; HT 36:12-18, 57:22 to 58:15.
10 Also, the vehicle was registered to a surname that BPA Sallee did not recognize as a
11 surname in the area. HT 36:19-24. BPA Sallee testified that he had become familiar over
12 the years with most of the surnames in the area, and he had never come across a resident
13 or associate of a resident with that surname. HT 36:19-24, 68:10-14. In BPA Sallee's
14 experience, smuggling in the area most often involves nonlocal vehicles guided by
15 smuggling associates to the Menagers Dam area to pick up drugs or UNCs. HT 36:13-18.

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21 At the time BPA Sallee noticed the vehicle at milepost 20, BPA Olivas was on duty
22 in his patrol vehicle farther south on FR-1 at approximately milepost 5, south of Pia Oik
23 and north of Menagers Dam. HT 8:16-19; Exhibit 1 at p. 3. BPA Sallee contacted BPA
24 Olivas and confirmed BPA Olivas's position. HT 9:7-10, 9:23 to 10:6, 39:7-8. BPA Sallee
25 gave BPA Olivas a description of the Equinox and asked BPA Olivas to notify him if the
26 Equinox passed BPA Olivas's position. HT 9:23 to 10:10; Exhibit 1 at p. 3. Approximately
27 10 to 15 minutes later, BPA Olivas saw the vehicle pass his position near milepost 5 and
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1 continue south on FR-1 toward Menagers Dam, and he informed BPA Sallee of his
2 observation. HT 10:11-17, 12:8-12; Exhibit 1 at p. 3. Having passed BPA Olivas's
3 position, the vehicle was heading toward Menagers Dam. Exhibit 1 at p. 3.
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5 Approximately 15 to 20 minutes later, BPA Olivas was driving south on FR-1
6 toward Menagers Dam when he again saw the Equinox. HT 12:13-18. This time, the
7 vehicle was heading back north on FR-1. HT 12:17-18. BPA Olivas notified BPA Sallee
8 that the vehicle was heading back north on FR-1. HT 12:19-24. This communication
9 occurred between 6:00 p.m. and 6:10 p.m. Exhibit 1 at p. 3; HT 41:5-7. According to BPA
10 Sallee, the timing and turnaround at or near Menagers Dam, with the evidence of a nonlocal
11 vehicle and nonresident, fit the pattern for smugglers picking up drugs or UNCs in the area.
12 HT 41:21 to 42:2. BPA Sallee then set out to stop the vehicle. HT 41:15-20, 63:2-3.
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15 BPA Sallee stopped the vehicle near milepost 11 on FR-1. Exhibit 1 at p. 3; HT
16 42:3-7. It is alleged that the driver of the Equinox was Defendant. Exhibit 1 at p. 3. It
17 also is alleged that two UNCs were found on the backseat floor hiding under blankets. *Id.*
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19 An image from BPA Sallee's body camera footage during the stop shows a near-
20 dark sky, the Equinox with its headlights illuminating the road ahead, and no other vehicles
21 on FR-1. Exhibit 11; HT 35:13-23. Only one other vehicle passed the area of the stop and
22 subsequent investigation and arrests. HT 64:8-24, 13:3-5.
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24 **Motion To Suppress.**

25 In support of the stop, the Government cites BPA Sallee's conclusion that the facts
26 fit the pattern for smuggling in this high-smuggling area, particularly that the vehicle and
27 driver appeared to be nonlocal, followed a notorious smuggling route in a restricted and
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1 rural area at or near sundown, and made a quick turnaround in the location of loadout areas
2 and stash houses near the border and headed back north. Defendant argues the facts amount
3 to a hunch or broad profile casting too broad a net over innocent traffic such as residents,
4 visitors or someone out for a drive. Defendant notes the vehicle was not speeding, weaving
5 or moving in an erratic manner; the vehicle's windows were not unusually dark; the driver
6 was not observed acting nervous; an unusual number of passengers was not observed; the
7 vehicle did not appear heavily laden; and the vehicle was not observed stopping anywhere.
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10 **Reasonable Suspicion Standard.**

11 A law enforcement officer may make an investigatory stop consistent with the
12 Fourth Amendment if there is reasonable suspicion to believe that criminal activity may be
13 afoot. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citations omitted). Reasonable
14 suspicion exists when specific facts, together with rational inferences drawn from them,
15 warrant a suspicion that the person has committed or is about to commit a crime. *United*
16 *States v. Cortez*, 449 U.S. 411, 416-19 (1981); *see also United States v. Valdes-Vega*, 738
17 F.3d 1074, 1078 (9th Cir. 2013) (defining reasonable suspicion as “a particularized and
18 objective basis for suspecting the person stopped of criminal activity”) (citation omitted).
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20 Reasonable suspicion is more than a “hunch,” but it is a low bar and does not require
21 probable cause. *Arvizu*, 534 U.S. at 274. Reasonable suspicion requires considerably less
22 indication of wrongdoing than that required to satisfy the preponderance of evidence
23 standard. *Id.* (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).
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25 The Court is to consider the totality of the circumstances that confronted the officer
26 at the time of the stop. *Sokolow*, 490 U.S. at 8; *United States v. Berber-Tinoco*, 510 F.3d
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1 1083, 1087 (9th Cir. 2007). The assessment precludes a “divide-and-conquer analysis”
2 because, though each of the suspect’s acts may be innocent, when taken together under the
3 circumstances they may warrant further investigation. *Arvizu*, 534 U.S. at 274. “A
4 determination that reasonable suspicion exists ... need not rule out the possibility of
5 innocent conduct.” *Valdes-Vega*, 738 F.3d at 1078-79 (quoting *Arvizu*, 534 U.S. at 277).
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8 The facts underlying reasonable suspicion must be measured against an objective
9 reasonableness standard. *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1445 (9th Cir. 1994).
10 However, an officer is “entitled to assess the facts in light of his experience in detecting
11 illegal entry and smuggling.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975).
12 An officer’s training and experience may be considered in his or her assessment of the facts
13 so long as inferences drawn are objectively reasonable, and the Court is to give such
14 reasonable inferences “due weight.” *Arvizu*, 534 U.S. at 273, 277; *see also Cortez*, 449
15 U.S. at 418; *United States v. Montero-Camargo*, 208 F.3d 1122, 1131 (9th Cir. 2000).
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18 For stops by Border Patrol agents, the totality of circumstances may include but are
19 not limited to: (1) the characteristics of the area where the vehicle is encountered; (2) the
20 vehicle’s proximity to the border; (3) usual patterns of traffic and time of day; (3) patterns
21 and information about previous drug or human smuggling in the area; (4) whether certain
22 types of vehicles are frequently used to transport contraband or undocumented people; (5)
23 erratic behavior on the part of the driver or attempts to evade law enforcement; and (6)
24 whether the vehicle is heavily loaded or has an unusual number of passengers. *Brignoni-*
25 *Ponce*, 422 U.S. at 884-85. “Not all of these factors must be present or highly probative in
26 every case to justify reasonable suspicion ... [a]nd the facts must be filtered through the
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1 lens of the agents' training and experience." *Valdes-Vega*, 738 F.3d at 1079.

2 If the stop lacks reasonable suspicion, all evidence seized as a result of the stop must
3 be suppressed as fruit of the poisonous tree. *United States v. Morales*, 252 F.3d 1070, 1073
4 (9th Cir. 2001).

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6 **Discussion.**

7 The Court finds reasonable suspicion for the stop. The characteristics of the area,
8 proximity to the border, information about the vehicle, usual pattern of local traffic, time
9 of day, behavior of the vehicle, and history and pattern of smuggling in the area, together
10 with the reasonable inferences of an experienced agent, support BPA Sallee's reasonable
11 suspicion that this vehicle had traveled into the FR-1 corridor, had picked up drugs or
12 UNCs, and was traveling back to Eloy or elsewhere with its illegal cargo.

13 The FR-1 corridor is a heavy smuggling route, due to its rural nature, proximity to
14 the border, ready availability of stash houses and loadout areas, and lack of Border Patrol
15 checkpoints. It has a history of daily smuggling in which nonlocal vehicles travel south on
16 FR-1 from SR-86 to or near Menagers Dam, pick up drugs or UNCs from loadout areas or
17 stash houses, and travel back out north on FR-1 to SR-86 and beyond. *See Arvizu*, 534
18 U.S. at 269, 277 (finding it significant that defendant was on route primarily used by
19 ranchers and forest service employees but commonly used by smugglers); *Berber-Tinoco*,
20 510 F.3d at 1088-89 (relying on agents' inferences from modes and patterns of smuggling).
21 FR-1 dead-ends in Menagers Dam just a half-mile or so from the border. The area has
22 relatively few residents and little traffic. Aside from residences, many of which are often
23 unoccupied and used by smugglers as stash houses, the area has no visitor accommodations
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1 or attractions. There are no businesses. The vehicle was first encountered at the north end
2 of FR-1 near SR-86 driving south toward Menagers Dam at or just before sundown on a
3 Sunday evening. BPA Sallee's records check revealed the vehicle was registered to Eloy,
4 a smuggling trans-shipment center, typical of smuggling in the FR-1 corridor. The vehicle
5 traveled from SR-86, a route from Eloy and other smuggling centers, to or near Menagers
6 Dam into an area where active loadout areas exist within easy walking distance of the
7 border. The vehicle, having traveled to an area where drugs and UNCs are loaded into
8 vehicles, headed back north on FR-1, back toward where it came, within minutes, also
9 characteristic of active smuggling in the area. Given a speed limit of 35 miles per hour
10 between communities (HT 15:21-16:4) and the 15 to 30 minutes between the sighting at
11 milepost 5 heading south and the sighting heading back north – and given that the vehicle
12 had traveled from milepost 20 to milepost 5 in 10 to 15 minutes – it is reasonable to infer
13 that the vehicle would have reached the loadout areas at mileposts 4 and 2, or a stash house
14 in Menagers Dam, and could have taken on drugs or UNCs before heading back north.

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16 The facts in this case are sufficiently particularized to avoid the overbreadth
17 Defendant cites. First, though certain facts, if they exist, may support reasonable suspicion,
18 no facts or combination of facts are necessary in all cases. *Valdes-Vega*, 738 F.3d at 1079.
19 The inquiry is whether the facts that do exist, taken together, add up to reasonable suspicion
20 under all the circumstances. *Id.* “Any number of factors may be taken into account in
21 deciding whether there is a reasonable suspicion.” *Brignoni-Ponce*, 422 U.S. at 885.
22 Second, reasonable suspicion does not require ruling out innocent behavior. *Valdes-Vega*,
23 738 F.3d at 1079 (citing *Arvizu*, 534 U.S. at 277). Last, here, the likelihood of a resident
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1 or visitor or someone out for a drive was reduced (*see Arvizu*, 534 U.S. at 277): BPA
2 Sallee's records check indicated a nonlocal vehicle; the vehicle had set out in a remote area
3 on tribal land at sundown when any sights would be obscured by darkness; the small
4 community where the vehicle traveled had no non-residential destinations, attractions or
5 accommodations for visitors; after 17 years working in the area, BPA Sallee was familiar
6 with the local vehicles and this vehicle was not one he had normally observed in the area;
7 signs notified would-be adventurers that the area was restricted; the vehicle traveled within
8 almost a stone's throw of the border, where known stash houses and loadout areas exist;
9 the vehicle spent just minutes there before backtracking north, back toward SR-86 and
10 access to points beyond, including Eloy where the vehicle was registered 100 miles away;
11 and the vehicle had progressed miles back north to Pia Oik before being stopped. The facts
12 relating to this vehicle and its behavior, viewed in the context of the FR-1 corridor and
13 active smuggling in the area and BPA Sallee's experience, reasonably indicated smuggling
14 sufficient to stop the vehicle to investigate whether the activity was innocent.

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16 The Court finds, based on the totality of circumstances, that reasonable suspicion
17 existed for this stop. The Court further finds the agents' testimony and BPA Sallee's report
18 (Exhibit 1) to be credible based on content and demeanor. Any differences or omissions
19 between or among the agents' recollections at the hearing and the report are minor and do
20 not affect the finding of reasonable suspicion.

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22 **Recommendation.**

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24 Based on the foregoing, the Magistrate Judge recommends that the District Court,
25 after its independent review, deny the Motion to Suppress Evidence (Doc. 32).

